

arising from his earlier active participation in the company as well as his standing as a member of the company.

Since there is no serious attempt made by the respondents to object to this petition, I had from the many documentary evidence adduced, allowed the petition and ordered

- (1) that the 1st respondent purchase the petitioner's shares in the company for an amount to be valued by an independent valuer.
- (2) that the 2nd respondent secure the release of the petitioner from all personal guarantees and other securities furnished by the petitioner in respect of banking facilities granted to the 2nd respondent.
- (3) costs.

a

LEE CHIOU CHING

v.

PUBLIC PROSECUTOR

HIGH COURT, SIBU

TUAN STEVE L.K. SHIM J.

b

[CRIMINAL APPLICATION NO. 2 OF 1994]

11 MAY 1994

c

CRIMINAL PROCEDURE: Bail - Charge of being in possession of 89.81 grammes of ganja - Dangerous Drugs Act 1952 s. 12(2) read with s. 39A(2)(f) - Not guilty plea - Accused refused bail and ordered to be remanded - Whether bail ought to be granted - Dangerous Drugs Acts. 41B - CPCs. 259.

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This was an application by way of motion to reverse or vary the order of the Sessions Court, Sibu, which ordered the applicant to be remanded in prison under s. 259 CPC, after the applicant pleaded not guilty to a charge of being in possession of 89.81 grammes of ganja under s. 12(2) Dangerous Drugs Act 1952 read with s. 39A(2)(f) thereof. It was argued before the learned appellate Judge that the Sessions Court had erred in law in placing too much emphasis on *Public Prosecutor v. Leong Ying Ming* [1992] 1 MLJ 177 and in failing to consider the case of *Ho Huan Chong & Ors. v. Public Prosecutor* [1980] 2 MLJ 289 which, according to the applicant's Counsel, is still good law.

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Held:

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[1] The supreme Court in *Public Prosecutor v. Leong Ying Ming*, in considering the case of *Leong Siew Hoong v. Public Prosecutor* [1988] 1 MLJ 396, had indirectly considered *Ho Huan Chong*. On the basis of the authority in *Public Prosecutor v. Leong Ying Ming* it is clear that the approach adopted by the High Court in *Ho Huan Chong* was not followed or approved by the Supreme Court. That being the position the applicant's reliance upon *Ho Huan Chong* is misplaced.

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[2] In any event *Ho Huan Chong* is distinguishable from the instant case on the facts. In that case it is patently clear that the difference between the amount of heroin stated in the charge and that of the prescribed limit in law, being only 2.4 grammes, is very marginal and so the possibility of the stated amount going below the legally prescribed amount is real and significant. That possibility does not arise here as

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there is a difference of 39.81 grammes in weight

between the stated amount appearing in the charge and the prescribed limit, which weight in the circumstances, is not insubstantial. It is therefore hardly surprising that the Court in that case had taken a more cautious approach.

[Application dismissed].

Cases referred to:

Ho Huan Chong & Ors. v. Public Prosecutor [1980] 2 MLJ 289 (**not foll**)

Public Prosecutor v. Leong Ying Ming [1992] 1 MLJ 177 (**refd**)

Leong Siew Hoong v. Public Prosecutor [1988] 1 MLJ 396 (**refd**)

Legislation referred to:

Dangerous Drugs Act 1952, ss.12(2), 39A(2)(f), 41B
Criminal Procedure Code, s. 259

For the applicant - Orlando Chua; M/s. Wong ,
Orlando Chua & Co.

For the respondent - Selvanathan, DPP

JUDGMENT

Steve L. K. Shim J:

In the Sessions Court Sibon on 11 April 1994, the applicant Lee Chiou Ching was formally charged with the offence of being in possession of 89.81 grammes of ganja under s. 12(2) of the Dangerous Drugs Act, 1952 read with s. 39A(2)(f) of the said Act. The applicant pleaded not guilty thereto. The prosecution thereupon applied that the applicant be remanded in prison custody citing in support the provisions of s. 41B of the Act. Mr. Orlando Chua, representing the applicant, objected to the application and submitted that the applicant ought to be granted bail relying, it would seem, on the authority of *Ho Huan Chong & Ors. v. Public Prosecutor* [1980] 2 MLJ 289. Notwithstanding the objection, the Sessions Court allowed the prosecution's request and ordered the applicant be remanded in prison under s. 259 of the Criminal Procedure Code.

The applicant has now applied by way of motion to reverse or vary the order of the Sessions Court. She has filed an affidavit in support. Before me Mr. Orlando Chua for the applicant has submitted in effect that the Sessions Court had erred in law in placing too much emphasis on *Public Prosecutor v. Leong Ying Ming* [1992] 1 MLJ 177 and in failing to consider the case of *Ho Huan Chong & Ors. v. Public Prosecutor* (*supra*), which, according to him, is still good law.

a This application can be considered on two fronts. In *Public Prosecutor v. Leong Ying Ming*, the Supreme Court did consider the case of *Leong Siew Hoong v. Public Prosecutor* [1988] 1 MLJ 396 in which K.C. Vohrah J, had discussed in some detail the arguments and propositions raised in *Ho Huan Chong*. In that context and to this extent therefore, it cannot be said that the Supreme Court in *Public Prosecutor v. Leong Ying Ming* had not considered *Ho Huan Chong*. The Supreme Court had considered it indirectly and by implication. It should be noted that in considering *Leong Siew Hoong*, the Supreme Court in *Public Prosecutor v. Leong Ying Ming* appeared to have approved the approach taken by K.C. Vohrah J. This is reflected in the following passage therein:

In that case, K.C. Vohrah J. also held that in considering whether the accused was entitled to bail, the crucial question was what is the offence the accused is charged with, and not what the net weight of the drugs might eventually be, to bring the case within a different section of the Act.

d In the circumstances, on the basis of the authority in *Public Prosecutor v. Leong Ying Ming*, I am bound to say that the approach adopted by the High Court in *Ho Huan Chong* appears not to have been followed or approved by the Supreme Court. That being the position, the applicant's reliance upon *Ho Huan Chong* is clearly misplaced.

e In any event, I think *Ho Huan Chong* is distinguishable from the instant case on the facts. In that case, it is patently clear that the difference between the amount of 7.4 grammes of heroin (as stated in the charge) and the amount of 5 grammes (as the prescribed limit in law) is very marginal or minimal and so the possibility of the stated amount going below the legally prescribed amount is obviously real and significant. There is only a difference of 2.4 grammes in weight. Not so in our case where the stated amount appearing in the charge is 89.81 grammes of ganja. When this is weighed against the prescribed limit of 50 grammes, there is a difference of 39.81 grammes in weight, which I think is not insubstantial under the circumstances. Furthermore, the notes of proceeding show that in our case, the whole matter had been referred to the Deputy Public Prosecutor who had directed the charge to the formally preferred against the applicant. It must be assumed, unless there is clear evidence to the

contrary, that the Deputy Public Prosecutor must have studied the relevant investigation papers which would conceivably include information from the Chemistry Department though not necessarily in the form of chemist report per se. There is no indication that these same factors were present in *Ho Huan Chong*. That being so, it is hardly surprising that the Court should have taken a more cautious approach in that case.

For the reasons given, I will dismiss this application and confirm the order of the Sessions Court.

LEE PHET BOON

v.

**HOCK THAI FINANCE
CORPORATION BERHAD**

HIGH COURT, MIRI

DATO' HAJI ABDUL KADIR BIN
SULAIMAN J.

[ORIGINATING MOTION NO. MR. 9
OF 1993]
23 APRIL 1994

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LAND LAW: Section 148 Sarawak Land Code - Order for sale - No bidders - Judge ordering second auction - SAR fixing auction date and reserve price - Application to set aside orders of Judge and SAR or for declaration that orders ultra vires - Whether order for sale pursuant to s. 148 subject to certiorari or declaration - Consideration of O. 15 r. 16 of RHC - Section 14(1) & item 1 of Schedule Courts of Judicature Act 1964.

PRACTICE & PROCEDURE: Originating motion to set aside two orders made in chambers by Judge and SAR concerning sale of land - Alternative prayer for declaration that orders ultra vires, null and void - Defendant raising preliminary objections - Contention that application should be by way of summons and not originating motion - Whether wrong procedure adopted - When originating motion applicable - Consideration of O. 5 rr. 1 & 5, O. 8 r. 3 Rules of the High Court 1980 - Sections 148(2) (c), 150, 151 & 152 Sarawak Land Code.

JURISDICTION: Application to set aside ex parte order of Judge made in chambers - Contention that Court being of co-ordinate jurisdiction had no jurisdiction to deal with the application relating to the order by the Judge as Judge was functus officio - Whether Judge functus officio - Whether present Court had jurisdiction to deal with application - Consideration of O. 28 r. 4(1) & O. 32 r. 6 of the RHC 1980.

ADMINISTRATIVE LAW: Whether certiorari would lie to quash the decision of a Judge of the High Court or other person acting judicially - Whether Judge exercising power under s. 148 of the Sarawak Land Code to make an order for sale of land was acting in quasi-judicial or administrative capacity - Whether subject to a writ of certiorari - Consideration of item 1 of Schedule to Courts of Judicature Act 1964 - Section 148 Sarawak Land Code.

ADMINISTRATIVE LAW: Declaration - Whether order by Judge for sale of land pursuant to s. 148 of the Sarawak Land Code was subject to declaration - Whether plaintiff had other remedies in respect of orders made